

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL PALL, MARY PALL, and)	
EMILY PALL, a minor, by her parents)	
and next friends Michael Pall and Mary Pall,)	
)	
Plaintiffs,)	
)	Case No. 08 CV 3778
vs.)	
)	Judge David H. Coar
THE VILLAGE OF INDIAN HEAD PARK,)	
an Illinois Municipal Corporation,)	Jury Trial Demanded
)	
Defendant.)	

AMENDED MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, Plaintiffs move the Court for a preliminary injunction enjoining the Defendants from continuing to prevent the construction and placement of a safety fence surrounding the entirety of Plaintiffs' backyard. In support of this motion, Plaintiffs respectfully submit the following matters for review and consideration:

1. There is a substantial likelihood that Plaintiffs will eventually prevail on the merits of their claims and particular the denial of a reasonable accommodation as required by 42 U.S.C. 3604(f)(3)(B) as stated in Count II of their Complaint;
2. Plaintiffs will suffer irreparable injury unless the injunction issues, as more particularly appears in the Complaint filed in this action;
3. The threatened injury to Plaintiffs outweighs whatever damage the proposed injunction may cause the opposing party; and
4. The injunction, if issued, would not be adverse to the public interest.

5. The injunction, if issued, will preliminary enjoin the Village of Indian Head Park from interfering with the construction of a necessary safety fence at 6472 Apache Drive. The safety fence (illustrated and attached hereto as Exhibit A, "Plat of Survey, 6472 Apache Drive") will be as follows:

- a. Constructed of black wrought iron;
- b. Stand no more than five-feet above ground level;
- c. Extend to the east and west from the rear, or south, foundation wall on both the east and the west sides of the dwelling, including service doors on the east side of the residence, to the lot boundary;
- d. Installed inside the lot line to enclose the rear lot behind the residence;
- e. Shall not have spikes or pointed ends on the top of the fence;
- f. Be equipped with a gate with a self-closing child-proof closing mechanism;
- g. Not subject to any condition requiring landscape screening or landscape plan to be submitted and approved by the Village of Indian Head Park at anytime prior to a trial on the issue of a permanent injunction; and
- h. Not subject to any unnecessary, unreasonable, or arbitrary condition of the Village of Indian Head Park.

5. A proposed order granting the preliminary injunction is attached hereto as Exhibit "B", "Proposed Order".

WHEREFORE, Plaintiffs respectfully request the Court to issue an order preliminarily enjoining the Defendant Village of Indian Head Park from interfering with the construction of a necessary safety fence, enclosing the rear yard at 6472 Apache Drive,

until such time as the Court can set the matter for trial on the issue of a permanent injunction.

Dated: July 8, 2008

Respectfully Submitted,

Michael Pall, Mary Pall, and Emily Pall
Plaintiffs

By: /s/ James C. Whiteside
One of their Attorneys

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PROPOSED ORDER

This cause was heard on the motion of Plaintiffs for a preliminary injunction, and due notice was given to Defendant. The Court has considered has considered the testimony and has considered the arguments of counsel, and finds: Defendant's interference with the construction of a fence enclosing the rear area of the lot at 6472 Apache Drive, Indian Head Park, Illinois, causes irreparable harm to Emily Pall, a disabled individual; a fence enclosing the rear area of the lot at 6472 Apache Drive, Indian Head Park, Illinois is necessary for the safety of Emily Pall, a disabled individual; a fence enclosing the rear area of the lot at 6472 Apache Drive, Indian Head Park, Illinois will affirmatively enhance the life of Emily Pall, a disabled individual, by reducing the effects of her disability through the recommended therapy of use and enjoyment of the outdoors.

It is Ordered, Adjudged and Decreed that, pending further order of this Court, the Defendant, the Village of Indian Head Park, Illinois, its officers, agents, representatives, employees and successors, and all other persons in active concert and participation with

B

it, are hereby restrained and enjoined from interfering with the construction of a necessary safety fence for Emily Pall and commanded to permit Plaintiffs construction of a fence at 6472 Apache Drive. The safety fence (illustrated and attached hereto as Exhibit A, "Plat of Survey, 6472 Apache Drive") will be constructed as follows:

- a. Constructed of black wrought iron;
- b. Stand no more than five-feet above ground level;
- c. Extend to the east and west from the rear, or south, foundation wall on both the east and the west sides of the dwelling, including service doors on the east side of the residence, to the lot boundary;
- d. Installed inside the lot line to enclose the rear lot behind the residence;
- e. Shall not have spikes or pointed ends on the top of the fence;
- f. Be equipped with a gate with a self-closing child-proof closing mechanism;
- g. Not subject to any condition requiring landscape screening or landscape plan to be submitted and approved by the Village of Indian Head Park at anytime prior to a trial on the issue of a permanent injunction; and
- h. Not subject to any unnecessary, unreasonable, or arbitrary condition of the Village of Indian Head Park.

It is **Further Ordered, Adjudged and Decreed** that this Order shall be effective until such time as the Court can conduct a trial on the issue of a permanent injunction.

Date _____

Entered _____
United States District Judge

Prepared By:
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